

PATENT APP. NO. 09/907,078

RESPONSE TO OCT. 19, 2005 OFFICE ACTION  
ATTORNEY DOCKET NO. 47004.000089**REMARKS**

These Remarks are responsive to the Office Action mailed on October 19, 2005 (the "Office Action"). The Applicants respectfully request reconsideration of the claim rejections for at least the reasons set forth below.

**STATUS OF THE CLAIMS**

Claims 39-47, 49-66, and 68-86 are pending in the application, and all claims currently stand rejected.

**REJECTIONS UNDER 35 U.S.C. § 103(a)**

The Office Action rejects claims 39-47, 49-66, and 68-86 35 U.S.C. § 103(a) as allegedly being unpatentable over Keyes (U.S. Pat. No. 6,456,983) in view of Culhane (U.S. Pat. No. 6,513,018) and in further view of Land (U.S. Pat. No. 6,807,533). The Applicants note that the present Office Action repeats the May 5, 2005 Office Action, with the only exception being that the Office Action now relies upon Culhane in addition to the previously-cited Keyes and Land references. As such, in order to focus the issues presented in this case, the Applicants incorporate their previous remarks in the August 4, 2005 Reply (the "Previous Reply") by reference, and generally concentrate on the newly-raised arguments in the Office Action.

**CULHANE FAILS TO RECTIFY THE FAILURE OF KEYES AND LAND  
TO TEACH ASSIGNING A SCORE TO AN ACCOUNT AGENT  
BASED ON A CHANGE IN AN ACCOUNT'S DELINQUENCY**

In the Previous Reply, the Applicants explained that the combination of Keyes and Land fails to present a *prima facie* case of obviousness because the references fail to teach or disclose:

- "generating an account metric ... including a weighting according to at least a change in level of delinquency of the account, ... and ... assigning a score to the account agent based on the account metric," as recited in claim 39;
- "identify[ing] a change in level of delinquency of the account ... generat[ing] an account metric ... including a weighting according to at least the reduction in the level of delinquency of the account; and ... assign[ing] a

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score to the account agent based on the account metric," as recited in claim 58; or,

- "calculat[ing] a change in delinquency, as measured by the difference between the first delinquency level and the second delinquency level; and assign[ing] a performance score to the account agent, based at least in part on the change in delinquency," as recited in claims 77 and 82.

The addition of Culhane fails to rectify these deficiencies.

### Keyes

Keyes does not address the issue of evaluating account agent performance in *any way*, and instead teaches a regime for determining whether it is more worthwhile to keep a group of accounts and try to collect on them, or sell the accounts to other entities at a discount. *See* Previous Reply at 5-7. Furthermore, while Keyes generates historical portfolio information that tracks the payment history from previous delinquent accounts, *see* Keyes, col. 5, ll. 11-22, and calculates a "score" that reflects "the payment which would be expected to be received on the subject historical delinquent account based upon certain assumptions," *id.*, col. 5, ll. 63-65, all of these calculations are performed based on the *static* level of delinquency at a particular time, *not* the *change* in delinquency. *See* Previous Reply at 6.

### Culhane

The Examiner now applies Culhane to supplement Keyes. To this end, the Office Action alleges that

Culhane teaches analyzing current and previous delinquency levels (column 5, lines 5-33). Therefore the Examiner believes Keyes and Culhane teach the limitation of "generating an account metric based on the step of comparing the baseline status to the updated status, the account metric including a weighting according to at least a change in the level of delinquency of the account."

Office Action at 4. Like Keyes, Culhane says nothing at all about evaluating the performance of an *account agent*, and therefore the rejection still relies upon Land for this aspect of the rejection.

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Culhane provides a method for generating a credit score and tailoring such predictions according to various variables. More specifically, Culhane claims that it is particularly useful for predicting a collection score representing the likelihood of repayment on a delinquent account. Culhane, col. 2, ll. 3-8. That is, Culhane is used to determine how likely individuals are to pay on their delinquent accounts.

Culhane predicts the likelihood that an individual will pay on a particular account by comparing the amount owed on the account to the amounts owed on all of the individual's other accounts, as well as the relative level of delinquency of the various separate accounts, to determine the amount of "collection competition" that the account being evaluated will experience when trying to collect on the debt. *Id.* at col. 2, ll. 20-33. Culhane provides a short list of disclosures regarding the use of delinquency levels, including examination of:

- (a) the "current level of delinquency," *id.* at col. 5, ll. 7-8;
- (b) "previous delinquency and repayment that targeted whether or not a consumer had a history of being mildly delinquent and returning to current status," *id.* at col. 5, ll. 9-11; and
- (c) "Current levels of delinquency and amount owed across all trade lines," *id.* at col. 5, ll. 30-31.

Culhane does *not* disclose measuring the specific *change* in delinquency level of a *particular* account as a metric. Citation (b) in the above list only discloses determining whether the consumer goes delinquent and returns to current status — it does not measure a change in level of delinquency or otherwise track how the payments progress through the buckets. Citation (c) refers to comparing delinquency levels of various different accounts (*i.e.*, which accounts are more or less delinquent than the others), *not* comparing the various levels of a *single* account over time. As such, even with Culhane thrown into the mix, the combined references still fail to teach or reasonably suggest the claimed features of "generating an account metric ... including a weighting according to at least a change in level of delinquency of the account" (claim

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39), "generat[ing] an account metric ... including a weighting according to at least the reduction in the level of delinquency of the account" (claim 58), or "calculat[ing] a change in delinquency, as measured by the difference between the first delinquency level and the second delinquency level; and assign[ing] a performance score to the account agent, based at least in part on the change in delinquency" (claims 77 and 82).

Regardless, even if one were to construe Culhane to disclose the use of the measurement of a change in delinquency of a single account as an account metric, Culhane is still deficient for the same reason as Keyes. Namely, it does not address the issue of evaluating the performance of *account agents* in any way. As such, Culhane and Keyes still do not anticipate or render obvious the use of the "change in level of delinquency of an account" to "assign[] a score to the *account agent*," as required by the pending claims. As such, the Office Action still relies upon Land for the suggestion to use the alleged combined teaching of Keyes and Culhane as a tool to measure the performance of account agents. Office Action at 4.

### Land

The latest Office Action alleges that "Land teaches that an agent's incentive are the percentages received (column 11, lines 45-60) based on the movement of the account through 'buckets' (column 10, lines 8-24)." Office Action at 4. This statement alleges a connection between account agent incentives and delinquency movement that simply does not exist in the Land patent.

The Office Action's first citation, to column 11, lines 45-60, falls under the heading "Delinquency Management," *see* Land, col. 11, l. 45, and is the portion of Land that discusses how to evaluate credit officers. In this disclosure, Land describes two conventional techniques: collections as a percent to available receivables (that is, the amount collected compared to the total amount due), and percent of forecasted collections (which are used to measure the credit officer's ability to set accurate collection targets). Land also describes credit officers being reviewed based on the "delinquency ratio," which is the ratio of number of past due loans to the total number

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of loans serviced. *Id.*, col. 11, ll. 65-67. None of these suggests using the *change* in delinquency — the ability the credit officer to pull accounts back from deeper levels of delinquency — to evaluate the credit officer's performance.

In order to complete the rejection, the Office Action further cites to Land at column 10, lines 8-24 for the alleged disclosure that the credit officer evaluation regime of "percentages received" is "based on the movement of the account through 'buckets' (column 10, lines 8-24)." Office Action at 4 (emphasis added). It is unclear how the Office Action can draw this conclusion. The citation to column 10 is not in the portion that deals with evaluating credit officers at all, but is actually embedded in the portion of Land that discusses how to apply payments to the accounts. Here, Land discusses that the delinquency amount of the aging bucket is not reduced until the cash is actually applied. Notably, Land says absolutely *nothing* about using the movement of the account through buckets (the change in delinquency) described in column 10 in conjunction with the separate and distinct portion of Land that deals with how credit officers are evaluated. As such, it is unclear how the Office Action concludes that the evaluation regime that uses "percentages received" is somehow "based on" the movement of the account through buckets. Land simply does not connect these two concepts in any way.

As such, it is respectfully submitted that no reasonable interpretation of Land supports the contention that Land discloses account agent performance evaluation being linked with the change in level of delinquency of an account. The interpretation of Land set forth in the Office Action folds together two portions of the Land reference that have no logical connection within the body of the reference itself, and this rearrangement of the text literally *changes* the meaning of the Land disclosure in a manner that is not supported by the reference itself. In fact, when Land is read the way it is written, it is clear that it utterly *fails* to connect the separate concepts of examining a change in the level of delinquency of an account and evaluating account agents. Rather, as stated above, Land merely discloses conventional metrics for evaluating

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account agents, and does not provide any suggestion that these metrics are deficient or that they can be modified or supplemented in any way.

As such, even if one were to combine the teachings of Keyes and Culhane with Land, one still would still lack any teaching or suggestion in the combined references that the change in level of delinquency of an account should be used to evaluate the performance of account agents. Keyes does not address either concept. Culhane mentions examining various aspects of delinquency, but is directed to predicting *consumer* activity, not scoring the performance of *account agents*. Land mentions the terms "delinquency" and "buckets," and discusses conventional account agent evaluation metrics, but does not tie these two concepts together in any way. As such, the entire group of references fails to connect these two concepts as they are in the present invention, and fail to render obvious each and every claim limitation. For at least the foregoing reasons, the Applicants respectfully request reconsideration and allowance of the pending claims.

NO MOTIVATION TO COMBINE THE REFERENCES IS FOUND IN THE  
REFERENCES THEMSELVES OR THE GENERAL KNOWLEDGE IN THE ART

The present Office Action combines Keyes, Culhane and Land because it allegedly "would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to combine [the references] because it provides an obvious expedient to use the scoring teachings of Keyes and Culhane along with the percentage incentives taught by Keyes and Land to increase collection of unpaid debts." The Applicants respectfully traverse this combination of references.

To begin with, the Office Action provides no specific citation for the alleged motivation to combine, other than a general statement that it was somehow in the knowledge of those of ordinary skill in the art. As such, the Office Action appears to invoke the Official Notice provision of MPEP § 2144.03. The Applicants respectfully submit that such Official Notice is not properly set forth and not based upon common knowledge. The Applicants know of no knowledge in the prior art at the time of this invention that any type of account metric using the change in delinquency of an account

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could be combined with account agent evaluation techniques to increase collection of unpaid debts. As such, the Applicants respectfully request documentary evidence to support this conclusion. *See* MPEP § 2144.03(C).

There is also no motivation to combine Land with either Keyes or Culhane in the references themselves.

As noted before, Keyes provides a system for evaluating whether delinquent accounts should be kept or sold to a third party offering to buy the accounts at a discount. *See*, Keyes, col. 2, ll. 3-9. In doing so, Keyes compares the current delinquent accounts to similar historical accounts to give some indication as to how much money can be expected on the current delinquent accounts. *Id.*, at col. 8, l. 62- col. 9, l. 19. Notably, Keyes does not discuss evaluating credit officers in any way. Nor does Keyes discuss any sort of credit inquiry functions, remittance processing functions (other than to simply observe the history of remittance on historical delinquent accounts), managing customer disputes, maintaining customer information, or handling system security of high-level system functions. In short, Keyes does not deal with any of the issues that are addressed in the Land patent.

Culhane is similar to Keyes in that it attempts to evaluate whether individuals will pay on their delinquent accounts. It is also similar to Keyes in that it utterly fails to say anything about evaluating account agents, and has nothing to do with all of the features addressed in the Land patent (credit inquiry functions, remittance processing functions, etc.).

Furthermore, Land fails to disclose any particular connection with the subject matter of either Keyes or Culhane. Although Land describes various factors relating to delinquent accounts that are considered in the process of trying to recover payment on these accounts, it does not discuss any specific regime for using this information to determine whether to keep or sell the account (as in Keyes) or whether the debtor will or will not pay on the account (as in Culhane). In fact, the discussion in Land's "Delinquency Management" section, which is the portion of Land that describes

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examining statistical information about delinquent accounts in detail, appears to be premised on the assumption that it has been decided to *retain* the account (or that no consideration of selling the account has ever been made). As such, Land does not deal with a situation in which an entity is trying to determine whether to sell an account or determine the probability of receiving payment, or any of the other issues addressed in the Keyes and Culhane patents.

As such, none of Keyes, Culhane or Land appears to make any disclosure that the references could be bundled together and modified to "provide[] an expedient to use the scoring teachings of Keyes and Culhane along with the percentage incentives taught by Keyes and Land to increase collection of unpaid debts." Keyes deals solely with evaluating delinquent accounts to determine how much money can be expected to be received on them, and then determining whether to sell them if the expected returns are less than the sale value. Culhane does the same, but uses delinquency factors to evaluate the likelihood of an individual paying on an account. Neither Keyes nor Culhane addresses the issue of evaluating the performance of account agents, and therefore neither reference can provide the alleged motivation to combine their teachings with Land. Land, on the other hand, discloses evaluating credit officers, but the disclosure is limited to conventional incentives for measuring performance — collections as a percent of receivables, collection as a percent of forecasted collections, and delinquency ratios. Land, col. 11, ll. 53-67. In fact, when it is read properly, Land does not make any statements or suggestions that any *other* factors can be used to evaluate the performance of the account agents. As such, Land does not suggest or disclose that any account metrics other than those in the disclosure would be useful to evaluate the performance of credit officers in recovering remittance on delinquent accounts. As such, Land does not suggest any combination of its teachings with Keyes or Culhane to provide other account metrics for evaluating credit officer performance.

In view of the foregoing, the Applicants respectfully submit that neither Keyes nor Land provides the requisite motivation to combine the references, and it has not been shown that such a motivation is in the knowledge generally available to one of



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ordinary skill in the art. In fact, the only source of such motivation is the present disclosure, which is the only known reference that recognizes that the change in level of delinquency can be used as an effective metric for evaluating the performance of customer service agents that are assigned the task of collecting on delinquent accounts. For this additional reason, the Applicants respectfully request reconsideration and allowance of the pending claims. *See, In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); and MPEP § 2143.01.

THE REFERENCES DO NOT PROVIDE A REASONABLE EXPECTATION OF SUCCESS

As explained in detail in the Previous Reply, neither Keyes nor Land provides any reasonable expectation of success in their combined teaching. The addition of Culhane also does not provide the requisite reasonable expectation of success.

Neither Keyes nor Culhane discusses any use of its system to evaluate the performance of credit officers. As such, neither reference can teach or suggest that its scoring system could be used successfully to evaluate credit officers that are trying to collect the debts owed on delinquent accounts. Furthermore, Land is limited to only disclosing the use of conventional incentives for measuring performance, and does not disclose or suggest that any other type of account metric might be useful for assessing the performance of credit officers. As such, Land also fails to provide any suggestion that using the change in the delinquency of an account could be a successful method for better evaluating the credit officers or improving their efficiency.

In view of the foregoing, the Applicants respectfully submit that Keyes, Culhane and Land still fail to provide the required teaching or suggestion that the use of a metric using the change in delinquency of an account would be successful. In fact, the conclusion that the combination of the claimed features would be successful appears to come solely from the fact that the combination is shown in the present invention, which can not be relied upon as the teaching or suggestion for a reasonable expectation of success. *See, In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). For this additional reason, reconsideration and allowance of independent claims 39, 58, 77 and

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82, as well as all of the remaining claims, which depend therefrom, is respectfully requested. *Id.*

#### EVIDENCE OF NON-OBVIOUSNESS

The Applicants provided with the Previous Reply a Declaration under 37 C.F.R. § 1.132 of Dr. William F. Mann III (the "Mann Declaration") as additional evidence of non-obviousness of the claimed subject matter. While the Mann Declaration was submitted with the Previous Reply, it is fully applicable to the present rejection of the claims, and therefore it is incorporated herein by reference. The Mann Declaration sets forth compelling evidence of non-obviousness, and fully satisfies the requirements forth in MPEP §§ 716.03.

The Office Action does not address, or even mention, the Mann Declaration, and therefore it appears not to have been considered in making the latest rejection. As set forth in the Manual of Patent Examining Procedure, the failure to consider this evidence is improper: "[a] determination under 35 U.S.C. § 103 should rest on all the evidence and should not be influenced by any earlier conclusion. MPEP § 2144.08(III).

It is respectfully submitted that the Mann Declaration rebuts and invalidates the combination of the references applied against the present invention. Furthermore, this factual evidence stands wholly un rebutted by the Patent Office. For this additional reason, the Applicants request reconsideration and allowance of the pending claims.

#### **CONCLUSION**

The Applicants respectfully submit that the application is in condition for allowance, and therefore request reconsideration and notice of allowance. If the Examiner believes that prosecution might be advanced by discussing the application with Applicants' counsel, in person or over the telephone, Applicants' counsel would welcome the opportunity to do so.

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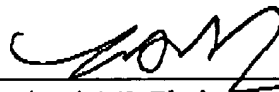
No fees are believed to be due in conjunction with this filing, however, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0206 for any required fees.

Respectfully submitted,

**HUNTON & WILLIAMS LLP**

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